

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BYRSON CITY DIVISION
2:09 cr 27**

THIS MATTER coming on before the undersigned, pursuant to a motion filed by defendant's counsel entitled "Defendant's *Ex Parte* Motion for Expert Witness" (#53). This motion was referred to the undersigned by the District Court. By Order (#49) of the District Court filed on September 7, 2010 the court found that if the defendant filed a notice of intent to assert a defense of insanity, pursuant to Rule 12.2(a) of the Federal Rules of Criminal Procedure, then the defendant would be entitled to an examination by an expert witness for the purpose of providing a report and testimony concerning this defense. 18 USC § 3006A(e)(1) provides as follows:

(1) Upon Request.----Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application. Upon finding, after appropriate inquire in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the Unites States magistrate judge if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

The undersigned has found the defendant is indigent and is financially unable

to obtain expert services for adequate representation. The court further finds that the services of an expert psychologist or psychiatrist to examine the defendant and provide testimony are services that are necessary for a proper defense and defendant is financially unable to obtain such services. As a result, the undersigned will authorize counsel to obtain the services of an expert witness in the field of psychology or psychiatry.

In the Order of the District Court the court further stated, “counsel must supplement his motion with a statement of the total number of hours required for the evaluation.” The defendant has filed a notice of intent to assert such a defense of insanity (#50) and in the defendant’s motion (#53) counsel has advised he has been in contact with Dr. Anthony B. Sciara who will perform the psychological or psychiatric examination. In the motion it is estimated that Dr. Sciara would expend approximately ten (10) hours of time to complete the evaluation of defendant, which would include four hours of travel time. To assure adequate services for the defendant, the undersigned will authorize an expenditure, at this time, of no more than \$2,000 for the costs and expense of the examination by Dr. Sciara which is necessary to provide fair compensation for the services. The court will further enter an order to alleviate completely the amount of travel time required by Dr. Sciara to visit defendant by requiring the United States Marshal to transport defendant from the

detention facility in Cherokee County, NC where defendant is being held to the Buncombe County Jail in Asheville, NC which will be the place for the examination of defendant by Dr. Sciara will take place. The time of such transportation will be set forth in a separate order. As a result of this Order, the expenditure of the entire \$2000 allotted should not be necessary and should be less than said sum.

ORDER

IT IS, THEREFORE, ORDERED that the defendant's motion entitled "Defendant's *Ex Parte* Motion for Expert Witness" (#53) is hereby **ALLOWED** and counsel for defendant is authorized to obtain the services of a psychologist or psychiatrist to examine defendant at a cost not in excess of \$2,000. Counsel for defendant shall provide the court with a time of the examination and the undersigned will, by separate order, direct the United States Marshal to transport defendant from defendant's place of detention in Cherokee County, NC to the Buncombe County Jail in Asheville, NC where the examination shall take place.

Signed: September 30, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

